

APPEAL NO. 030942
FILED JUNE 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 28, 2003. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the second quarter. The appellant (carrier) appealed, asserting that the hearing officer erred in determining that the claimant met the good faith requirement for SIBs entitlement and that the claimant earned less than 80% of his preinjury wage during the relevant qualifying period. The carrier also appealed an attorney fees award, which will be dealt with as a separate appeal. The file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on _____; that the claimant's impairment rating as a result of the compensable injury was 45%; that the claimant has not commuted any portion of his impairment income benefits; that the qualifying period for the second quarter was from June 17 through September 15, 2002; and that the claimant's average weekly wage was \$450.00. The claimant testified that during the qualifying period, he worked with a day labor company doing construction clean up as the work was available. In evidence were pay stubs dated July 28, 2002, August 4, 2002, August 11, 2002, and August 18, 2002. The claimant testified that he worked more than what is reflected on the pay stubs. The evidence regarding exactly how often the claimant worked and how much he earned during the relevant qualifying period was in conflict. Upon review of the evidence, the hearing officer determined that the claimant had returned to employment which was relatively equivalent to his ability to work and that he had earned less than 80% of his preinjury wages as a direct result of his impairment from the compensable injury during the qualifying period for the second quarter.

The hearing officer did not err in determining that the claimant is entitled to second quarter SIBs. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) establish the requirements for entitlement to SIBs. At issue was whether the claimant earned less than 80% of his preinjury wages as a direct result of the impairment from the compensable injury pursuant to Rule 130.102(b)(1) and whether he satisfied the good faith criteria by returning to work in a position relatively equal to his ability to work during the qualifying period. Rule 130.102(d)(1). Whether the return to work job is a position relatively equal to the claimant's ability to work is largely a fact question. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Accordingly the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN INTERSTATE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEVE ROPER
1616 SOUTH CHESTNUT STREET
LUFKIN, TEXAS 75901.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

CONCUR IN THE RESULT:

Robert W. Potts
Appeals Judge